

**Delhi High Court**

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**Delhi High Court**

**Delhi Sikh Gurudwara Management vs Mohinder Singh Matharu on 12 September, 2012**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA No.606 of 2010 LPA No.607 of 2010

Reserved on: 23rd August, 2012

% Pronounced on: September 12, 2012

1. LPA No.606/2010

DELHI SIKH GURUDWARA MANAGEMENT

COMMITTEE & ORS. . . . APPELLANT

through : Mr. K.T.S. Tulsi, Sr. Advocate along with Mr. Raj Kamal and

Mr. Gaurang Vardhan,

Advocates.

VERSUS

MOHINDER SINGH MATHARU . . .RESPONDENT

through: Mr. Gurbaksh Singh along with Ms. Richa, Advocates.

2. LPA No.607/2010

DELHI SIKH GURUDWARA MANAGEMENT

COMMITTEE & ORS. . . . APPELLANT

through : Mr. K.T.S. Tulsi, Sr. Advocate along with Mr. Raj Kamal and

Mr. Gaurang Vardhan,

Advocates.

VERSUS

JATHEDAR KULDIP SINGH BHOGAL . . .RESPONDENT

through: Mr. Gurbaksh Singh along with Ms. Richa, Advocates.

CORAM :-

LPA No.606/2010 & LPA No.607/2010 Page 1 of 9 HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI (Acting Chief Justice)

1. The appellant in both these appeals, is the Delhi Sigh Gurudwara Management Committee, which is held to be a „public authority" within the meaning of Section 2(h) of the Right to Information Act, 2005 (hereinafter referred to as the „RTI Act") by the learned Single Judge vide impugned judgment dated 22.7.2010, which is a common judgment in both the cases. Section 2(h) of the RTI Act reads as under:

"2(h) "public authority" means any authority or body or institution of self-government established or constituted, -

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any-

(i) body owned, controlled or substantially financed; (ii) Non-Government Organization substantially financed,

directly or indirectly by funds provided by the appropriate Government."

2. Though Section is published in the Bare Act in the aforesaid manner, there is little difference in the publication in Official Gazette as far as its placement of the provision is concerned. Since it has significant bearing on the interpretation sought to be suggested by the counsel for the parties, we reproduce the provision published in the Official Gazette as well which reads as under:

LPA No.606/2010 & LPA No.607/2010 Page 2 of 9 "2 (h) "public authority" means any authority or institution of self-government established or constituted -

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government,

and includes any-

(i) body owned, controlled or substantially financed; (ii) non-Government organization substantially financed,

directly or indirectly by funds provided by the appropriate Government."

3. Submission of Mr. K.T.S. Tulsi, learned Senior Counsel appearing for the appellant, was that in Section 2(h) of the RTI Act, the words "and includes any" occurring after Section 2(h)(d) have to be read conjunctively and, therefore, even if a body fell within the definition of a public authority under Section 2(h)(a) to (d), such a body would have to be substantially financed "directly or indirectly by funds provided by the appropriate Government". In other words, there cannot be any disjunctive reading of the later portion of Section 2(h) and that it had to be read as one continuous whole. On this basis, it is argued that the appellant which may have been established by a law made by the Parliament is not a public authority, since it did not receive funds "directly or indirectly" from any appropriate Government.

4. In support of this argument, the learned counsel has relied upon various judgments laying down the principle of interpretation of

LPA No.606/2010 & LPA No.607/2010 Page 3 of 9 statute and stressed that when the word "and" is incorporated instead of word "or" before the words "includes any". It has to be read conjunctively, meaning thereby, disjunctive meaning should be permissible only if the word "or" was used by the Legislature. These judgments are:

(i) State (Delhi Administration) Vs. Puran Mal, (1985) 2 SCC 589;

(ii) Paras Ram Vs. State of Haryana, (1999) 5 SCC 662; (iii) J. Jayalalitha Vs. Union of India, (1999) 5 SCC 138; (iv) The State of Bombay Vs. R.M.D. Chamarbaugwala, AIR 1957 SC 699;

(v) Pooran Singh and Anr. Vs. State of M.P., AIR 1965 SC 1583;

(vi) Rajesh Kumar and Others Vs. Dy. CIT and Others, (2007) 2 SCC 181;

(vii) Sahara India (Firm) Lucknow Vs. Commissioner of Income Tax, (2004) 14 SCC 151;

(viii) The Star Co. Ltd. Vs. Commissioner of Income Tax (Central) Calcutta (1970) 3 SCC 864

(ix) Hyderabad Asbestos Cement Product And Anthers Vs. UOI, (2000) 1 SCC 426.

5. Though there cannot be any dispute or quarrel about the proposition laid down upon the aforesaid judgments touching upon the interpretation of the words "and" "or", we are afraid, insofar as present case is concerned on the plain reading of the provision,

LPA No.606/2010 & LPA No.607/2010 Page 4 of 9 nothing turns thereupon. In the first instance, we may point out this interpretation as highlighted by Mr. Tulsi is on the basis of text published in the Bare Act, which is private publication. However, the authenticated version would be the one published in the Official Gazette, which is the official version. Reading of Section 2(h) of the RTI Act as contained in the Official Gazette would make it clear that the words "and includes" are not part of Clause (d), but they are placed separately, independently and away from Clause (d) of Section 2(h) of the RTI Act. The learned Single Judge has, therefore, rightly interpreted this provision in the following manner: "11. A comparison of the two ways of depicting Section 2(h) makes it clear that in terms of the „official" version, which is therefore the reliable one, the words "and includes" is not joined to clause (d) but starts in a new line from the left extreme margin. The categories of bodies or institutions or authorities covered by Sections 2(h) (a), (b), (c) and (d) are therefore "stand alone" authorities or bodies. The words "and includes" beginning in a fresh line from the left margin is intended to indicate another set of bodies which may not fall within the categories of Section 2(h) (a), (b), (c) and (d).

12. This Court is unable to accept the submission made by Mr. Tulsi that the words "and includes" is not meant to be read disjunctively and, therefore, although a body may fall within the Section 2(h), (a), (b), (c) and (d) it would nevertheless have to satisfy the requirement of being "directly or indirectly" substantially financed by the appropriate Government. There is no scope for reading the provisions in the manner suggested by Mr. Tulsi.

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14. As regards the words "and includes", they are disjunctive and indicative of a separate set of entities. The discussion in the recent judgment of this Court in Krishak Bharti

LPA No.606/2010 & LPA No.607/2010 Page 5 of 9 Cooperative Ltd. v. Ramesh Chander Bawa 2010 (V) AD (Del) 405 may be usefully referred to. There the question was whether a multi-state cooperative society is a „public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act. It is in that context that in para 13, it was observed:

"13. Before embarking on a more detailed

analysis it is necessary to recapitulate the law concerning interpretation of the conjunctive "and includes". The expression "and includes"

connotes that those entities which answer the description following those words need not fall within

the definition of entities that precede those words. The word "includes" is generally understood in statutory interpretation as enlarging the meaning of the words or phrases in the body of the statute. In CIT v. Taj Mahal Hotel (1971) 3 SCC 550 the Supreme Court was considering whether the word "plant" in Section 10 (2) of the Income Tax Act 1922, include sanitary pipes and fittings in a building as well? Section 10(5) had defined „plant" to include "vehicles, books, scientific apparatus, surgical equipment purchased for the purpose of business." The Court held:

"The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include."

6. Even otherwise, if we read the provision in the manner suggested by Mr. Tulsi, in certain case, it may lead to absurd results inasmuch

LPA No.606/2010 & LPA No.607/2010 Page 6 of 9 Clause (d) of Section 2 of the RTI Act would apply to sub-Clause (ii) as well, viz., NGO which would mean a Non-Government Organization constituted by Notification issued by the appropriate Government. Such a situation is clearly far from contemplation.

7. We are of the opinion that Section 2(h) of the RTI Act is in two parts: an authority or body or institution of self-Government becomes "public authority" if it is established or constituted in any manner provided in Clause (a) to (d). Once it falls under any of the aforesaid four categories, there is no further or additional requirement at all and such an authority or body or institution of self-Government will be treated as "public authority". This becomes clear from the reading of four clauses, as such a body to become public authority is either constituted by or under the Constitution

or by or under the law made by the Parliament/State Legislature or by Notification issued or made by the appropriate Government. They are, thus, having either constitutional/statutory character or Governmental flavour because of their constitution by the appropriate Government.

8. In the second category, some more bodies are sought to be included by the incorporation of the words "and includes any". These are included Clauses (i) and (ii). The requirement for these bodies is as under: viz.,

(i) Body owned, controlled or substantially financed; (ii) Non-Government Organization substantially financed, and both should be directly or indirectly by funds provided by the appropriate Government.

LPA No.606/2010 & LPA No.607/2010 Page 7 of 9 Thus, if it is a body either owned by the appropriate Government or controlled by the appropriate Government or substantially financed directly or indirectly by the appropriate Government, it would become public authority. Any of the aforesaid requirement is sufficient, viz. either ownership or control or substantially financed. When it comes to the NGO, obviously such an NGO not be owned or controlled or substantially financed by the appropriate Government directly or indirectly by funds provided by the appropriate Government.

9. Once we read the definition of "public authority" in Section 2(h) of the RTI Act in the aforesaid manner, obvious conclusion would be that the appellant is a "public authority" as it is constituted by the Act of the Parliament. Undeniably, the appellant is a statutory body under Delhi Sikh Gurdwaras Act, 1971 (hereinafter referred to as the „DSG Act"). It is constituted under Section 3 of the DSG Act. It is not a body made under any law, but a body made by the aforesaid law. The learned Single Judge as rightly pointed out that there is a distinction between the use of the words "by any law made by Parliament" and "by or under the Constitution". The Parliament has consciously not used the words "by or under" in sub-clause (b) of Section 2(h). In other words, once the body is established or constituted by the law made by Parliament, it would be a "public authority" under Section 2(h)(b) of the RTI Act.

10. We are in agreement with the aforesaid view. We, thus, hold that once it is found that an authority or body or institution of self- Government is established or constituted in any manner prescribed

LPA No.606/2010 & LPA No.607/2010 Page 8 of 9 in Clause (a) to (d) of Section 2(h) of the RTI Act, then there is no further requirement of such a body to be either owned or controlled or substantially financed by an appropriate Government.

11. We, thus, do not find any merit in these appeals, which are accordingly dismissed.

ACTING CHIEF JUSTICE

(RAJIV SAHAI ENDLAW)

JUDGE

SEPTEMBER 12, 2012

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